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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,690	08/05/2002	Neil J. Rowley	PA-9948	3740
22840 7590 12/29/2006 GE HEALTHCARE BIO-SCIENCES CORP. PATENT DEPARTMENT 800 CENTENNIAL AVENUE PISCATAWAY, NJ 08855			EXAMINER JONES, DAMERON LEVEST	
			ART UNIT	PAPER NUMBER
			1618	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		12/29/2006	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/069,690	<b>Applicant(s)</b> ROWLEY ET AL.	
	<b>Examiner</b> D. L. Jones	<b>Art Unit</b> 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10/16/06.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **ACKNOWLEDGMENTS**

1. The Examiner acknowledges receipt of Applicant's request for reconsideration filed 10/16/06.

**Note:** Claims 1-9 are pending.

## **RESPONSE TO APPLICANT'S AMENDMENT/ARGUMENTS**

2. The Applicant's arguments filed 10/16/06 to the rejection of claims 1-9 made by the Examiner under 35 USC 103 have been fully considered and non-persuasive for reasons of record in the office action mailed 6/16/06 and those of record in the office actions mailed 3/24/06; 12/22/05; and 9/26/05.

### **103 Rejections**

I. The rejection of claims 1-4, 8, and 9 under 35 USC 103(a) as being unpatentable over Felder (US Patent No. 5,132,409) in view of any one of either one of Schott Glaswerke (DE 29609958) or Walther (US Patent No. 6,200,658) is MAINTAINED for reasons of record in the office action mailed 6/16/06 and those of record in the office actions mailed 3/24/06; 12/22/05; and 9/26/05.

II. The rejection of claims 1, 5, 6, 8, and 9 under 35 USC 103(a) as being unpatentable over Albert (US Patent No. 5,545,396) in view of any one of either one of Schott Glaswerke (DE 29609958) or Walther (US Patent No. 6,200,658) is MAINTAINED for reasons of record in the office action mailed 6/16/06 and those of record in the office actions mailed 3/24/06; 12/22/05; and 9/26/05.

III. The rejection of claims 1, 5, and 7-9 under 35 USC 103(a) as being unpatentable over Larson (US Patent No. 6,466,814) in view of any one of either one of Schott Glaswerke (DE 29609958) or Walther (US Patent No. 6,200,658) is MAINTAINED for reasons of record in the office action mailed 6/16/06 and those of record in the office actions mailed 3/24/06; 12/22/05; and 9/26/05.

Applicant's assertions may be summarized as follows which have previously been made of record and addressed. First, Applicant summarizes each of the cited references. Applicant asserts that Felder does not disclose, teach, or suggest materials to be used in the inner surface areas of the vials; hindsight was used to create the rejections; and there is no teaching, suggestions, or incentive to make the combination of references. In addition, Applicant asserts that the terms 'diagnostic agent' and 'hyperpolarized' used herein are generic terms; Walther does not limit the coating to silica; there is no motivation to improve the vial of Schott Glaswerke; Albert teaches that silicone should be employed for coating vessels used to store a hyperpolarized gas; and silica is an essential feature of the instant invention.

Applicant's arguments are not persuasive for reasons already of record in the office actions mailed 6/16/06; 3/24/06; 12/22/05; and 9/26/05. Applicant is reminded that a reference does not have to go into endless detail regarding a feature, but if that reference vaguely discloses the use of such a feature, then the reference is considered for its broad teachings. Furthermore, it is noted that the assertions were previously made and addressed in previous actions. Thus, instead of repeating the same responses over and over, Applicant's attention is directed to the responses of record in

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the office actions mailed 6/16/06; 3/24/06; 12/22/05; and 9/26/05 which are applicable to the current assertions. Thus, since one or more of the references teach a hyperpolarized material or a diagnostic agent having a non-radioactive metal complex, the references are combinable and the rejections are deemed proper.

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

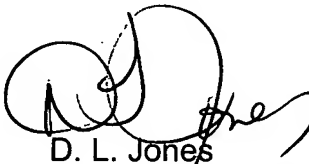
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. L. Jones whose telephone number is (571) 272-0617. The examiner can normally be reached on Mon.-Fri., 6:45 a.m. - 3:15 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



D. L. Jones  
Primary Examiner  
Art Unit 1618

December 26, 2006